

# PLANNING COMMISSION MINUTES

November 14, 2001

## CALL TO ORDER:

Chairman Vlad Voytilla called the meeting to order at 7:04 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

## ROLL CALL:

Present were Chairman Vlad Voytilla, Planning Commissioners Bob Barnard, Gary Bliss, Eric Johansen, Brian Lynott and Dan Maks. Planning Commissioner Russell Davis was excused.

Planning Consultant Irish Bunnell, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Voytilla, who presented the format for the meeting.

## VISITORS:

Chairman Voytilla asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

## STAFF COMMUNICATION:

On question, staff indicated that there were no communications at this time.

## OLD BUSINESS:

Chairman Voytilla opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response.

1                   **CONTINUANCES:**

2

3           **A.     TA 2001-0001 – CHAPTER 40 UPDATE TEXT AMENDMENT**

4                   (Continued from November 7, 2001)

5                   The City of Beaverton has proposed a comprehensive update of Chapter 40  
6                   (Permits and Applications) of the Beaverton Development Code. The  
7                   proposed amendments will establish the development applications to be  
8                   required in the City, the threshold(s) for determining the proper type of  
9                   application to be required, and the approval criteria by which the  
10                  application(s) will be evaluated. The existing Development Code contains  
11                  many of the same applications, thresholds, and approval criteria. The  
12                  proposed amendment will modify the existing applications, thresholds, and  
13                  approval criteria and add new applications, thresholds, and approval criteria.

14

15          **B.     TA 2001-0002 – CHAPTER 50 UPDATE TEXT AMENDMENT**

16                  (Continued from November 7, 2001)

17                  The City of Beaverton has proposed a comprehensive update of Chapter 50  
18                  (Procedures) of the Beaverton Development Code. The proposed  
19                  amendments will establish the procedures by which development applications  
20                  will be processed in the City. The procedures include, but are not limited to,  
21                  initiation of an application, withdrawal of an application, application  
22                  completeness, Type 1 through Type 4 application processes, and appeal(s),  
23                  expiration, extension, and modification of decisions. The proposed  
24                  amendment will modify existing procedures found in the Development Code  
25                  and establish new procedures to be made a part of the Code.

26

27          **C.     TA 2001-0003 – CHAPTER 10 UPDATE TEXT AMENDMENT**

28                  (Continued from November 7, 2001)

29                  The City of Beaverton has proposed a comprehensive update of Chapter 10  
30                  (General Provisions) of the Beaverton Development Code. The proposed  
31                  amendments will establish the legal framework of the Development Code.  
32                  Topics include, but are not limited to, compliance, interpretation, zoning  
33                  districts, zoning map, fees, conditions of approval, enforcement, and  
34                  development review participants. Development review participants include  
35                  the City Council, Planning Commission, Board of Design Review, Facilities  
36                  Review Committee, and the Community Development Director.

37

38          **D.     TA 2001-0004 – CHAPTER 60 UPDATE TEXT AMENDMENT**

39                  (Continued from November 7, 2001)

40                  The City of Beaverton has proposed amendments to Chapter 60 (Special  
41                  Requirements) of the Beaverton Development Code. The proposed  
42                  amendments have been necessitated by the comprehensive updates to Chapter  
43                  40 and Chapter 50 of the Development Code. The proposed amendments will  
44                  establish new special requirements for Land Division Standards and Planned  
45                  Unit Development. The amendments propose to modify existing Special Use  
46                  Regulations for Accessory Dwelling Unit, Accessory Uses and Structures, as

well as existing special requirements for Transportation Facilities and Trees and Vegetation. The amendments also propose to delete the provisions pertaining to Historic Preservation and Temporary Use Permits.

**E. TA 2001-0005 – CHAPTER 90 UPDATE TEXT AMENDMENT**

(Continued from November 7, 2001)

The City of Beaverton has proposed amendments to Chapter 90 (Definitions) of the Beaverton Development Code. The proposed amendments have been necessitated by the comprehensive updates to Chapter 40 and Chapter 50 of the Development Code. The proposed amendments will add definitions of new terms and amend existing definitions of terms use in the Development Code.

**F. TA 2001-0007 – BEAVERTON MUNICIPAL CODE TEXT AMENDMENT**

(Continued from November 7, 2001)

The City of Beaverton has proposed amendments to the Beaverton Municipal Code. The proposed amendments have been necessitated by the comprehensive updates to Chapter 40 and Chapter 50 of the Development Code. The proposed amendments will ensure that there is consistency between the provisions of the Municipal Code and the Development Code.

**G. TA 2001-0008 – CHAPTER 20 UPDATE TEXT AMENDMENT**

(Continued from November 7, 2001)

The City of Beaverton has proposed amendments to Chapter 20 (Land Uses) of Code. The proposed amendments have been necessitated by the comprehensive updates to Chapter 40 and Chapter 50 of the Development Code. The proposed amendments will also reorganize the Multiple Use zoning (Section 20.20) to make the Multiple Use zoning text read more clearly.

On question, Commissioner Lynott informed Chairman Voytilla that although he had been reviewing the tapes from the previous work sessions he had missed regarding the proposed text amendments, he has not yet completed his review of all of the tapes.

7:07 p.m. – Commissioner Barnard arrived.

7:08 p.m. to 7:24 p.m. -- Observing that a substantial amount of material had been submitted to the Planning Commissioners this evening, including communications from Todd Sadlo, attorney representing *Home Depot, Inc.*, and Phillip E. Grillo, representing *Miller/Nash LLP, Attorneys at Law*, both dated November 14, 2001, Chairman Voytilla called for a recess to provide for an opportunity to review this information.

1 At the request of Commissioner Maks, Chairman Voytilla reopened the Public  
2 Hearing for the purpose of receiving public testimony.

3  
4 **PUBLIC TESTIMONY:**

5  
6 **PHIL GRILLO**, attorney representing *Miller/Nash LLP, Attorneys at Law*,  
7 apologized for submitting this information at this late time, offering to briefly  
8 summarize his concerns and respond to any questions and comments.

9  
10 Commissioner Maks referred to Issue No. 1 listed in Mr. Grillo's letter, which  
11 specifically addresses the scope of Type 1 and Type 2 appeal requirements,  
12 requesting clarification of the requirement that any appeal be made by an  
13 individual "of record", which means that it is necessary for this individual to have  
14 provided either written or oral testimony regarding the issue of appeal. He  
15 pointed out that this is considered the first evidentiary hearing.

16  
17 Mr. Grillo explained that the issue of who is able to appeal is slightly different  
18 from the scope of appeal once this appeal has been filed, expressing his opinion  
19 that it is still possible for cities and counties to establish limitations on who is able  
20 to appeal. He clarified that once an appeal has been filed, the practical problem  
21 involves a citizen who appeals and the appeal is to be heard at the first evidentiary  
22 hearing. Other individuals who wish to testify as witnesses on their behalf take  
23 part in that first evidentiary hearing. He emphasized that it becomes difficult to  
24 manage exactly who is and who is not permitted to testify, observing that he is  
25 generally in the position of representing applicants. He pointed out that limited  
26 land use decisions allow an entity to narrow down those issues in what he  
27 considers a more legitimate manner.

28  
29 Commissioner Maks clarified that the current procedure addresses the appeal of a  
30 Type 2 application, which could be presented to the Planning Commission,  
31 adding that new evidence could be presented at this appeal hearing, emphasizing  
32 that this evidence would not be limited to what is on the record.

33  
34 Assistant City Attorney Ted Naemura mentioned that in attempt to address this  
35 issue, the City's approach had been write the code to focus on the appeal only  
36 without trying to shape the procedures of the Planning Director. He expressed his  
37 opinion that a de novo appeal out of a Type 1 decision would satisfy the bill.

38  
39 Commissioner Maks questioned whether a Type 1 decision would be considered  
40 de novo.

41  
42 Mr. Grillo advised Commissioner Maks that both Type 1 and Type 2 decisions  
43 would be considered de novo.

44  
45 Commissioner Maks requested clarification of whether this would address the  
46 issue.

1  
2 Mr. Grillo pointed out that the use of this term has created problems for numerous  
3 jurisdictions, noting that de novo means "to hear it again", when there has  
4 actually never been a hearing and there is nothing to be de novo  
5 from.

6  
7 Commissioner Maks suggested that it might be simpler to indicate that  
8 procedurally, the appeal would be a Type 2 hearing from the Planning  
9 Commission or the Board of Design Review.

10  
11 Mr. Grillo emphasized that while this is one approach, he would prefer to call it  
12 the first evidentiary hearing, adding that any issue that is relevant could be  
13 addressed at this first hearing, which simplifies the process. On question, he  
14 defined a hearing, depending upon whether it involves a statutory land use  
15 decision situation or a limited land use decision situation.

16  
17 Commissioner Maks pointed out that with a Type 2 application, notice is provided  
18 beforehand, evidence is received and reviewed, and findings are made. He  
19 mentioned that since notice was provided and evidence allowed to be presented,  
20 that, in his opinion, would quantify as a hearing.

21  
22 Mr. Grillo advised Commissioner Maks that this is dependent upon the statutory  
23 process involved, observing that while ORS 197763 involves regular land use  
24 decisions, a situation involving limited land use decisions involve a more limited  
25 hearing and different notification provisions and boundaries. He pointed out that  
26 while due process provides for the right of cross-examination, this is not done  
27 with land use decisions. Observing that there are three different basic types of  
28 hearings, he mentioned expedited land use decisions, limited land use decisions  
29 and statutory land use decisions.

30  
31 Observing that Mr. Grillo had brought up some relevant issues, Commissioner  
32 Maks conceded that while there could be some problems with Type 1 decisions,  
33 he is not certain that there would be issues with Type 2 decisions.

34  
35 On question, Planning Consultant Irish Bunnell advised Commissioner Johansen  
36 that the Planning Director has the ability to apply conditions to a Type 2  
37 application and that a member of the public who reviews the application and has  
38 no objections and submits no testimony would not receive a copy of the Planning  
39 Director's decision, including Conditions of Approval that have not been  
40 available previously. That person who did not participate would be precluded  
41 from appealing the decision, based upon the Conditions of Approval. He  
42 emphasized that any individual wishing to appeal must be considered a party of  
43 record, meaning that this individual has submitted either written or oral testimony,  
44 adding that the intent is to encourage the public to participate in the process from  
45 the beginning.

46

1 Commissioner Johansen expressed his opinion that this suggests that it would be  
2 beneficial to submit some testimony every time a Type 2 application is submitted,  
3 in order to get on the record and retain your right to appeal.  
4

5 Expressing his agreement with Commissioner Johansen, Chairman Voytilla  
6 pointed out that if an individual does not get on record and does not approve of  
7 any of the Conditions of Approval, they are still prevented from participating in  
8 the remainder of the process.  
9

10 Commissioner Maks pointed out that a letter or a telephone call serves to ensure  
11 that an individual is considered part of the official record. Referring to the  
12 Consolidated Review Process, he mentioned that there are different Type 3  
13 applications being processed through the Planning Commission and the Board of  
14 Design Review for the same applicant, and questioned the significance if the  
15 application is not appealed.  
16

17 Mr. Grillo stated that this does not matter as much if a Type 2 or a Type 3  
18 application is involved, adding that he does have concerns with both being  
19 considered together. He pointed out that there is potentially a different level of  
20 problem with Type 2 applications under the proposed system, emphasizing that  
21 they can never be presented simultaneously to the City Council.  
22

23 Commissioner Maks mentioned that a Type 1, Type 2 and a Type 3 could be  
24 "wrapped" into a Type 3 application.  
25

26 Mr. Grillo agreed that this could be done.  
27

28 Commissioner Maks emphasized that not everyone approves of the dual process,  
29 adding that although the resolution of tied votes in a Planning Director's  
30 Interpretation would effectively deny the appeal, facts and findings would be  
31 necessary for a Land Use Decision, emphasizing that he would like more  
32 information regarding this issue. He discussed interpretations of the Development  
33 Code, and requested clarification of whether an appeal of the Planning Director's  
34 Interpretation is addressed to the City Council.  
35

36 Mr. Bunnell advised Commissioner Maks that he would review the Development  
37 Code and address this issue as soon as he found the appropriate information.  
38

39 Mr. Grillo stated that generally, most of the Development Code interpretation  
40 occurs during the course of normal business by the Planning Commission or the  
41 Board of Design Review and involves a policy issue.  
42

43 Commissioner Maks clarified that the Planning Director interprets a Type 2  
44 application and that an individual has the right to appeal his interpretation of the  
45 Development Code as it relates to this application, adding that the Planning  
46 Commission becomes the final determinating factor of the intent of the

1 Development Code. He expressed his opinion that this issue should be reviewed  
2 and addressed.

3  
4 Mr. Naemura commented that this could, in some applications, such as CUP's,  
5 include Comprehensive Plan sections, as well, expressing his opinion that this  
6 would be included in the approval criteria, by reference.

7  
8 Commissioner Johansen requested clarification of whether this discussion very  
9 narrowly involves Planning Director Interpretations.

10  
11 Mr. Grillo explained that the Board of Design Review issues involves numerous  
12 design criteria that are sometimes difficult to interpret.

13  
14 Mr. Bunnell clarified that there are two different code interpretations, one of  
15 which involves an application within the proposed Chapter 40 and is officially  
16 called a Planning Director's Interpretation, which can be appealed straight to the  
17 City Council. The City Council is ultimately responsible for interpreting the  
18 Development Code. He pointed out that the other interpretation they are referring  
19 to is made by every staff member reviewing applications within the Development  
20 Services Division. These interpretations are made on a day-to-day basis, and are  
21 not actually appeal able. Only the official Director's Interpretation can be  
22 appealed. The Director's Interpretation is applied for and answered in writing.

23  
24 Commissioner Maks referred to the issue of rough proportionality, specifically the  
25 section that states, as follows: "...or to fulfill an identified need for public  
26 services caused by the impact of the proposal."

27  
28 Mr. Grillo stated that he agrees in principal, adding that his only comment is that  
29 he would expect that this type of public issue would be reflected within the  
30 relevant approval criteria to determine the burden of proof. He further clarified  
31 that he agrees as long as it is connected to proportionality caused by the  
32 development, which is the principal he is attempting to stick to, and suggested  
33 that this should be driven by the criteria, rather an a procedural section elsewhere  
34 within the Development Code.

35  
36 Commissioner Maks emphasized that it is the burden of proof for the applicant to  
37 prove that there is no impact. He referred to failure to fulfill previous conditions,  
38 noting that this involves a different site and suggesting that this issue be discussed  
39 with staff.

40  
41 Mr. Grillo commented that he understands the practical policy issue, adding that  
42 at the risk of suggesting that staff be obligated to do even more at the beginning of  
43 the process, this could be included as a requirement prior to having a project  
44 deemed complete.

45

1 Commissioner Maks emphasized that after a certain amount of time, an applicant  
2 has the right to declare that an application is complete, adding that staff is then  
3 required to process the application.  
4

5 Mr. Grillo agreed that it is possible to force your way through that process, adding  
6 that as a practical matter, this would be extremely difficult to manage in a  
7 particular case. He noted that the City of Portland has something akin to that,  
8 which he referred to as the “reconsideration process”, emphasizing that anyone  
9 who has ever been through this would agree that while it can be a very powerful  
10 tool, it also involves a terrible process. He expressed his opinion that this  
11 particular issue deserves more attention, emphasizing that this should not create a  
12 sideshow.  
13

14 Commissioner Maks questioned whether there is another way of achieving this in  
15 other jurisdictions, such as the City of Portland. He emphasized that he does not  
16 respect the word of any developer who has not fulfilled the Conditions of  
17 Approval on a previous project, adding that he does not want to approve any of  
18 their applications.  
19

20 Mr. Grillo pointed out that it is sometimes not possible to fulfill Conditions of  
21 Approval without a new land use application, adding that the phrase “shall not  
22 approve” basically eliminates the ability of an applicant to resolve some issues  
23 and problems. He suggested that some of these issues could be addressed at the  
24 administrative level by the Planning Director, who would then catch these issues,  
25 and that this could be discretionary, even at the hearing level.  
26

27 Commissioner Johansen mentioned that Code Enforcement is not adequate to  
28 enforce these Conditions of Approval, adding that he would like to find a more  
29 effective way to provide this necessary enforcement without creating additional  
30 work for staff.  
31

32 Mr. Grillo observed that his primary concern involves the potential for creating a  
33 sideshow, expressing his opinion that this should be considered further.  
34

35 Commissioner Johansen mentioned that he could only recall the sideshow  
36 situation in once application, specifically Waterhouse, adding that it had become  
37 necessary to eliminate comments from one particular individual.  
38

39 Observing that the Board of Design Review has required that HVAC equipment  
40 be screened on top of a structure for fifteen years, Commissioner Maks stated that  
41 he is aware of at least three locations where this condition has been required but  
42 has not been fulfilled. He suggested that the language should be changed to  
43 reflect that a new application could not go forward until the Conditions of  
44 Approval in the prior application had been addressed.  
45



1 Mr. Grillo suggested that the Planning Commission could have the authority to  
2 condition approval on this type of thing, specifically a particular issue that they  
3 had become aware of during the hearing, adding that this might reduce the  
4 potential for a sideshow.

5  
6 Mr. Bunnell mentioned that a criterion could be created providing that any  
7 previous projects must be fulfilled.

8  
9 Mr. Grillo suggested that rather than creating that criterion, the Planning  
10 Commission should obtain the authority under the Conditions of Approval to  
11 allow them to condition approval of a subsequent application upon the fulfillment  
12 of any Conditions of Approval within a prior application.

13  
14 Commissioner Bliss mentioned that he had discussed this issue with either City or  
15 County staff, adding that proportionality could create a potential conflict.

16  
17 Commissioner Maks expressed his agreement with Commissioner Bliss'  
18 comment, adding that the burden of proof is on the applicant to prove that they  
19 would do what they have indicated that they would do. He pointed out that it  
20 would be necessary to provide significant evidence indicating that the applicant  
21 has failed to fulfill these conditions in the past.

22  
23 Mr. Grillo suggested that he had encountered this situation as the Hearings  
24 Officer for the City of Portland, adding that he had routinely conditioned  
25 applicants on having to go through a Code Enforcement proceeding.

26  
27 Commissioner Bliss mentioned that it might be beneficial to determine how  
28 certain issues actually occurred, adding that it is possible that the City had not  
29 fulfilled their obligations to make certain that issues were addressed prior to final  
30 acceptance.

31  
32 Commissioner Maks emphasized that whether or not the issue came to the  
33 attention of the City of Beaverton, the issues would have been addressed if the  
34 applicant had fulfilled the required obligations.

35  
36 Commissioner Barnard pointed out that the procedure still involves final  
37 occupancy, inspection, entry and other components of the procedure.

38  
39 Commissioner Barnard expressed his opinion that although there could be a  
40 provision within the Development Code to safeguard everything that could  
41 possibly happen, he had never been aware of any application in which there had  
42 been any concern expressed because the applicant had failed to fulfill other  
43 obligations.

44  
45 Commissioner Maks emphasized that this does not occur very often, adding that  
46 he can only recall four times in the 8-1/2 years he has served on the Planning

1 Commission. He pointed out that he is very unhappy when he has a major  
2 proposal in front of him when he is aware that he is unable to take any action with  
3 a developer who has not fulfilled prior Conditions of Approval.  
4

5 Commissioner Barnard expressed his opinion that there is an ability to enforce a  
6 Condition of Approval, observing that the City of Beaverton has a Code  
7 Enforcement Officer.  
8

9 Commissioner Maks advised Commissioner Barnard that enough staff is not  
10 available to address all issues that need to be addressed.  
11

12 Chairman Voytilla observed that he understands that there is a serious lack of  
13 communication, expressing his opinion that while it is easy to look at the negative  
14 aspects, the majority of the applicants do conform and address applicable criteria.  
15 He pointed out that the multi-phase projects include numerous Conditions of  
16 Approval, noting that times change, conditions change, lenders change and  
17 partners change, which often requires certain adjustments.  
18

19 Commissioner Maks expressed his agreement with Chairman Voytilla's  
20 comments.  
21

22 Chairman Voytilla emphasized that flexibility is important.  
23

24 Agreeing that flexibility is important and it is possible to modify a PUD or a CUP,  
25 Commissioner Maks observed that the bottom line is whether an application has  
26 been conditioned.  
27

28 **TODD SADLO**, attorney representing *Home Depot, Inc.*, discussed the ability to  
29 conduct seasonal outdoor sales of living plant materials that are received in huge  
30 quantities at various times of the year, emphasizing that it is not feasible to locate  
31 all of these items within the garden center. He expressed his opinion that the five  
32 percent limitation on outdoor sales within this particular zone is intended to  
33 prevent individuals from doing the type of things described by Commissioner  
34 Maks, such as car lots, adding that it addresses the type of development that  
35 already exists along Canyon Road, invading the Community Service (CS) district.  
36 He emphasized that this type of development does not include *Home Depot, Inc.*,  
37 adding that they have a very attractive building and would simply like to be  
38 allowed to make maximum use of the parking lot at various time of the year for  
39 the sale of their plant materials. Observing that his client is currently required to  
40 provide a minimum of 448 parking spaces, he mentioned that this predates the  
41 Metro title, which has not established a minimum, adding that they would actually  
42 provide 495 parking spaces.  
43

44 Chairman Voytilla cautioned Mr. Sadlo that he is referring to a specific  
45 application that has not been addressed by the Planning Commission.  
46

1 Mr. Sadlo advised Chairman Voytilla that the Planning Commission would not be  
2 reviewing this application.

3  
4 Chairman Voytilla requested that Mr. Sadlo address the Planning Commission in  
5 more generic terms.

6  
7 Referring to the parking standard of a minimum of 448 parking spaces, Mr. Sadlo  
8 reiterated that his client would be providing 495 parking spaces, adding that he  
9 believes that 389 parking spaces would be adequate to accommodate all  
10 customers within that parking lot, without including the five percent that is  
11 already being utilized within the parking lot. Emphasizing that plenty of room is  
12 available, he pointed out that it would not become necessary for customers to park  
13 out in the street to shop at this facility. He mentioned that both of these options  
14 require an amendment to the newly created use of excess parking provision, he  
15 pointed out that he is not certain of the origin of this provision and these  
16 limitations. He noted that his client would like an opportunity to prove that all of  
17 those parking spaces are not necessary, adding that if this could be accomplished,  
18 the extra space could be utilized for a purpose better than empty asphalt. He  
19 pointed out that regardless of whether his client's request is accommodated, there  
20 are issues within the Development Code that need to be addressed. He mentioned  
21 that his client would like the Development Code to allow an amount of up to  
22 fifteen percent, in addition to the current five percent, for seasonal outdoor sales  
23 of live plant material, adding that this could be conditioned to make certain that  
24 any display is not unsightly and that any additional space utilized is not necessary  
25 for parking purposes.

26  
27 Commissioner Bliss expressed his opinion that a minimum of twenty percent of  
28 the required parking is trying to maintain within the air quality, specifically that  
29 while there is a minimum standard, there is not a unlimited amount of parking that  
30 could be available.

31  
32 Mr. Bunnell clarified that this information is buried in Chapter 60 of the existing  
33 code, which addresses excess parking, although because there is no specific  
34 application or procedure included within the existing code, they have removed  
35 this language from Chapter 60 and included it in Chapter 40, including an  
36 application and procedure within Chapter 50. He further clarified that it is  
37 necessary to show that at least twenty percent of the required parking is not  
38 utilized and can therefore be considered excess parking and utilized for another  
39 purpose. He emphasized that the term used in the code for parking above the  
40 required parking number is referred to as surplus parking. Excess parking is  
41 required parking that is not used.

42  
43 Commissioner Bliss referred to the request for an additional fifteen percent,  
44 beyond the original five percent, for a total of twenty percent, pointing out that he  
45 has an issue with the fifteen percent.

46

1 Mr. Sadlo clarified that there may be a misunderstanding, noting that his client  
2 believes that they are overdoing the parking, both because the space is available  
3 and it is required by the Development Code. He emphasized that if his client is  
4 required to stick to these standards, additional room is still available for seasonal  
5 outdoor plant sales, emphasizing that they should not be denied the option of  
6 obtaining a temporary permit, which would be the result of the current proposal.  
7 He reiterated that there is too much parking available and that this space could be  
8 better utilized for outdoor plant sales, emphasizing that twenty percent of this  
9 large parking lot is a lot of space. Observing that the Development Code requires  
10 his client to prove that twenty percent of their parking space is not necessary, he  
11 expressed his opinion that this amount is not feasible when they do not intend to  
12 utilize nearly that amount for outdoor plant sales. He explained that they would  
13 like to utilize an amount equaling fifteen percent of the gross floor area of the  
14 actual structure, rather than twenty percent of the parking area, adding that current  
15 restrictions limit the outdoor sales/storage/display to five percent of the structure.  
16 He emphasized that the current proposal limits outdoor sales/storage/display to  
17 time periods of 45 days twice a year.

18  
19 Commissioner Bliss pointed out that 295 days out of a year is not temporary or a  
20 short period of time, adding that a simplistic approach should identify the areas  
21 necessary for these temporary sales.

22  
23 Mr. Sadlo advised Commissioner Bliss that the proposed Option 2 provides for an  
24 increase in the amount allowed.

25  
26 Commissioner Maks requested clarification of what staff is attempting to  
27 accomplish in this particular section of the code, which specifically addresses  
28 temporary non-mobile sales. He pointed out that he does not approve of Option 2,  
29 adding that Option 1 is more compatible with his intentions. Observing that a  
30 business should be allowed to utilize five percent of the gross floor area of their  
31 structure for outdoor plant storage, he emphasized that he does not approve of  
32 displaying items such as fertilizer, lawn mowers and chippers outside and that 275  
33 out of 365 is, in his opinion, a permanent use, rather than temporary. He  
34 requested clarification of whether a separate subsection addressing this issue is  
35 feasible, rather than changing eight criteria. He expressed his opinion that the  
36 non-mobile sales category is aimed at establishments such as taco trucks, pointing  
37 out that if a significant number of criteria within one section are revised, an  
38 additional section might be necessary.

39  
40 Mr. Sadlo emphasized that some revisions are necessary for clarification  
41 purposes.

42  
43 Commissioner Maks questioned the feasibility of a specific category for  
44 temporary living items.  
45

1 Mr. Bunnell observed that there are several issues involved, noting that  
2 philosophically, the direction to staff had been to reduce the length of time that  
3 these temporary uses are allowed, as well as the number of times these uses can  
4 be extended. He mentioned that another issue involves the five percent of the  
5 gross floor area of the building, which is allowed outright in the CS zone, noting  
6 that the same is true of Convenience/Commercial, Neighborhood Service and  
7 Town Center/Sub-Regional. He pointed out that while Office/Commercial allows  
8 for no outdoor storage, General/Commercial allows for 100% outdoor storage,  
9 adding that the examples cited in Mr. Sadlo's letter are in General/Commercial  
10 zones in other cities. He suggested that the amount of outdoor storage to be  
11 allowed in any of these zones should be discussed in context with Chapter 20, in  
12 its entirety, emphasizing that he does not believe that this is the appropriate time  
13 to discuss this issue.

14  
15 Expressing his agreement with Mr. Bunnell, Commissioner Maks pointed out that  
16 he has no issue with the five percent limitation, adding that he feels that this is  
17 appropriate.

18  
19 Mr. Bunnell reiterated that there is a philosophical shift in the temporary uses,  
20 noting that the Development Code allows for a certain percentage of outdoor  
21 display on a permanent basis. He pointed out that a temporary use involves  
22 another issue, above and beyond that five percent limitation, adding that this  
23 includes tent sales, fireworks, circuses, etc.

24  
25 Emphasizing that the five percent is permitted outright throughout the year,  
26 Commissioner Maks requested clarification of what Mr. Sadlo is requesting.

27  
28 Mr. Sadlo explained that his concern is with seasonal sales that would have been  
29 allowed with a temporary permit in the past, observing that seasonal (fireworks  
30 and Christmas trees), with a 45-day time limit, does not actually serve the purpose  
31 intended by his client.

32  
33 Emphasizing that the five percent unlimited is allowed all of the time,  
34 Commissioner Maks expressed his opinion that while this should not be  
35 unlimited, it should be possible to expand beyond five percent, provided that  
36 parking is not impacted. He pointed out that temporary use should not exceed the  
37 120-day time limitation.

38  
39 Mr. Sadlo suggested that the Planning Director could issue a permit providing  
40 when an applicant would be allowed to operate temporarily for 120 days.

41  
42 Commissioner Maks mentioned that he has an issue with the phrase "associated  
43 with their business", observing that no business owner would be displaying  
44 outdoor merchandise that is not associated with their business.

45

1 Commissioner Barnard pointed out that as a retailer, he has been approached  
2 numerous times by individuals not associated with his business who are  
3 requesting to utilize the parking lot for their own purposes, for the purpose of  
4 selling rugs, plaques, signs, etc.

5  
6 Expressing his agreement, Mr. Maks commented that efforts should be made to  
7 eliminate the “rug hangers” and “picture framers” with the cyclone fences, adding  
8 that their space and time should be limited.

9  
10 Emphasizing that this involves a philosophical issue, Mr. Bunnell observed that  
11 this is temporary uses that are not associated with a permanent business,  
12 clarifying the difference between “Maks’ Christmas Tree Lot” and a Christmas  
13 Tree Lot operated by *Home Depot, Inc.*, which he referred to as temporary non-  
14 mobile sales.

15  
16 Mr. Sadlo requested clarification of why his client should not be allowed to sell  
17 Christmas trees, emphasizing that he objects to the Planning Commission  
18 eliminating their ability to sell live plant materials on a seasonal basis.

19  
20 Commissioner Maks pointed out that he has no problem with the live plant sales,  
21 adding that he does object to an ugly cyclone fence located in the middle of a  
22 parking lot.

23  
24 Mr. Bunnell mentioned that the language that is in the CS zone includes a use  
25 restriction, which provides for the following: “...activities conducted wholly  
26 within the enclosed structure, except for outside play areas for day care and  
27 school facilities...”; and “...accessory open air sales, display and storage shall  
28 constitute no more than five percent of the gross building floor area...”

29  
30 Commissioner Maks expressed concern with creating problems for the smaller  
31 retail, such as the local hardware store.

32  
33 Mr. Sadlo emphasized that he does not understand why there is an issue with  
34 getting these permits issued.

35  
36 The public portion of the Public Hearing was closed.

37  
38 Chairman Voytilla observed that he would like to get consensus from everyone  
39 regarding the issues, beginning with Chapter 40.

40  
41 Referring to his comments at the work session, Commissioner Bliss emphasized  
42 that he still sees the same language and still has the same issues, particularly that  
43 every project is supposed to fit the site and it does not work. He referred to page  
44 AP-2, Section 40.03, No. 9, expressing his opinion that the Development Code is  
45 very repetitive and restrictive, adding that there is already a situation in which if a  
46 preliminary plan and a final plan differ by two feet, an applicant is back to Square

1 One. He discussed contouring, grading and wall issues, emphasizing that there  
2 are too many restrictions and noted that he had requested that this issue be  
3 addressed at a work session with no success.  
4

5 Commissioner Bliss referred to page AP-24, which addresses the time line on a  
6 PUD, noting that although this has been discussed, he believes the proposal is  
7 more restrictive than the prior wording. He suggested that this be dealt with on a  
8 sliding scale, adding that he has no problem with the final plan being submitted  
9 within two years of the preliminary plan and that the construction of each  
10 subsequent stage should be initiated within two years of the prior stage.  
11 Observing that the economy tends to be based upon a seven-year cycle, he  
12 emphasized that this issue needs to be readdressed.  
13

14 Commissioner Bliss referred to page AP-26, Section 40.15.15.5.C.8, which states,  
15 as follows: "...have a minimum impact on livability in the surrounding area  
16 within a half mile of the subject site." He commented that he finds this statement  
17 too broad, adding that it is ludicrous to think that some small development such as  
18 a duplex would impact some property located a half a mile away.  
19

20 Commissioner Bliss referred to the bottom of page AP-38 and AP-42, Item 9,  
21 reiterating that he has issues with the grading, adding that this issue occurs several  
22 times throughout this chapter.  
23

24 Concluding his comments regarding Chapter 40, Commissioner Bliss referred to  
25 page AP-112, observing that he had replaced holiday with seasonal and that he  
26 feels that this issue had been adequately discussed this evening.  
27

28 Commissioner Johansen mentioned that he has three issues with Chapter 40,  
29 observing that he had distributed copies of his concerns with the existing code  
30 language and recommending specific language. Noting that the first issue is with  
31 the approval criteria for a CUP, he mentioned that the existing Development Code  
32 contains language with respect to compatibility and minimum impact on the  
33 livability and appropriate development of other properties in the surrounding  
34 neighborhood. He expressed his opinion that this is very critical language that has  
35 been eliminated from the current proposal, suggesting that the ability of the 158<sup>th</sup>  
36 Avenue/Walker Road area to develop as Office/Commercial had become  
37 significantly diminished as an overwhelming amount of CUPs were granted  
38 within the area. He requested that this language be added back into the  
39 Development Code.  
40

41 Commissioner Johansen discussed the approval criteria for quasi-judicial zone  
42 changes, specifically the changes from R-3.5 to R-2 and from R-7 to R-5,  
43 requiring a demonstration of adequate public facilities to service the increase in  
44 density, adding that this valuable language did not get carried over into the current  
45 proposal and should be restored.  
46

1 Commissioner Johansen referred to Section 40.75.15.1.C., observing that  
2 throughout the revision, the decision-making authority in this particular case has  
3 been deferred to the City Council, adding that this should be consistent  
4 throughout the Development Code.

5  
6 On question, Commissioner Barnard had no comments regarding Chapter 40.

7  
8 Observing that this had been discussed in the work session, Commissioner Maks  
9 referred to pages AP-15 and AP-16, which addresses modifications of conditional  
10 uses, both minor and major, adding that it should not be necessary to go through a  
11 huge process to simply change a doorway or window. He mentioned that a Type  
12 3 hearing should go back through a Type 3 hearing process for modification,  
13 adding that a minor modification does not meet this specific criterion. He agreed  
14 with Commissioner Johansen's statement regarding appropriate development,  
15 adding that the fast food Mecca on 158<sup>th</sup> Avenue is a good example. He agreed  
16 with Commissioner Bliss' opinion regarding the half-mile distance from the  
17 subject site, adding that in some instances, a half mile is too great, while in  
18 another's, a half mile is not enough. He emphasized that this issue should be up  
19 to the discretion of the hearing body, adding that the previous language had been  
20 adequate. Observing that it is true that the closer to the development, the greater  
21 the impact, is true in eighty percent of the cases, some situations create a greater  
22 impact further from the development.

23  
24 Referring to page AP-48, Commissioner Maks questioned whether the  
25 endorsement flexible setback should not require the permission of the adjacent  
26 property owners.

27  
28 Observing that he is unable to delegate that particular authority to a property  
29 owner, Mr. Bunnell emphasized that this permission comes from the City of  
30 Beaverton, rather than the property owner.

31  
32 Commissioner Maks referred to the approval criteria.

33  
34 Mr. Bunnell stated that the title of this particular application is Flexible Setback  
35 and Individual Lot with Endorsement, emphasizing that the word permission is  
36 not used and that the threshold demonstrates abutting property owners of record.

37  
38 Commissioner Maks referred to page AP-127, and questioned the potential  
39 removal of ten conditioned trees through a Type 2 Planning Director's decision  
40 after they had been previously conditioned through a Type 3 CUP or PUD.

41  
42 Mr. Bunnell clarified that this is not a modification of a condition, but a  
43 modification of the approved landscape plan by removing trees that were not  
44 conditioned under the previous approval, adding that this falls under the same  
45 category as a modification of any other previous approval.

46



1 Commissioner Maks emphasized that any modification to a Condition of  
2 Approval requires approval by the Planning Commission, adding that this needs  
3 to be clarified at the level of understanding of an eighth grader.  
4

5 Referring to variances, Commissioner Maks discussed the adjustment process,  
6 requesting clarification of whether he could do an adjustment to a setback.  
7

8 Mr. Bunnell advised Commissioner Maks that a setback could have either a minor  
9 or a major adjustment, which would result in 10% to 50%, although greater than  
10 50% would require a variance.  
11

12 Commissioner Maks discussed a potential 40% adjustment to a rear yard setback,  
13 reducing an R-7 zone required 25-foot setback to a 14-foot setback, requesting  
14 clarification of the process for a major adjustment.  
15

16 Mr. Bunnell stated that this would involve a Type 3 application, which would  
17 require a Public Hearing, adding that a setback could be modified by 10% through  
18 an administrative process, specifically a Planning Director's decision.  
19

20 Commissioner Maks questioned what the side yard setback is in an R-5 zone.  
21

22 Mr. Bunnell informed Commissioner Maks that the side yard setback in an R-5  
23 zone is five feet, adding that this could be administratively modified by up to six  
24 inches without having a Public Hearing.  
25

26 On question, both Commissioner Lynott and Chairman Voytilla indicated that  
27 they had no questions or comments at this time.  
28

29 Mr. Bunnell requested further direction, observing that staff had made no changes  
30 following the work sessions because the work session had mainly involved  
31 conversation and that he would prefer some indication of a consensus prior to  
32 making any revisions. He referred to the half-mile zone of influence,  
33 emphasizing that this is an effort to let the Development Code do the work, rather  
34 than requiring staff to make a determination with each separate application,  
35 emphasizing that this is discretionary decision and open to challenge.  
36

37 Chairman Voytilla pointed out that this appears to be a harsh requirement for an  
38 applicant to address.  
39

40 Mr. Bunnell agreed that while this could be a harsh requirement for some  
41 applications, there would be no issue in others.  
42

43 Chairman Voytilla requested clarification of whether this would be generated  
44 more by traffic impacts or utilities, specifically whether there could be another  
45 way of still providing for that elsewhere, such as through a Traffic Study.  
46

1 Commissioner Moks emphasized that that a Traffic Study is only necessary within  
2 the half-mile radius, adding that the impact could extend beyond that distance.  
3 He pointed out that there are instances in which the Development Code is not able  
4 to carry all the weight.

5  
6 Mr. Bunnell questioned the possibility of defining an impact with regard to the  
7 size of the project, specifically the distance and zone of influence related to the  
8 size of the project.

9  
10 Commissioner Moks commented that a lot of the impact is due to the traffic  
11 generation.

12  
13 Commissioner Barnard suggested that this definition be related to the trip  
14 generation, rather than the size of the project.

15  
16 Commissioner Moks stated that this involves not only the number of trips, adding  
17 that the location, surrounding neighborhood and trip distribution are also  
18 involved.

19  
20 Commissioner Bliss described a project he is currently working on, specifically a  
21 home for individuals with medical disabilities, observing that this small  
22 development situated in a residential area would have a very limited impact on the  
23 surrounding neighborhood. He pointed out that the half-mile radius involves an  
24 area that has no association and would have no impact.

25  
26 Emphasizing that the goal is for the Development Code to carry more weight,  
27 Commissioner Moks agreed that there are some objective issues that are largely  
28 dependent upon the location.

29  
30 Chairman Voytilla commented that the applicant could easily provide a  
31 reasonable description of the area and why it is not necessary to consider the  
32 entire half-mile radius.

33  
34 Commissioner Bliss expressed his opinion that an individual located a half mile  
35 away from a proposal could create a great deal of unnecessary problems, noting  
36 that this could be detrimental to some of the small assisted care facilities.

37  
38 Mr. Bunnell suggested that the language regarding the half-mile radius be revised  
39 to indicate that consideration should be given for up to this half-mile or even a  
40 mile while also providing that this entire distance may or may not be necessary.

41  
42 Commissioner Moks emphasized that location largely determines whether or not  
43 any impact exists, observing that the impact could easily extend beyond the half-  
44 mile indicated.

45

1 Mr. Bunnell pointed out that it is necessary to be able to provide specific  
2 guidelines for any applicant who walks in the door.

3  
4 Chairman Voytilla questioned whether staff is suggesting to the applicant that it  
5 would only be necessary to address a certain level within the required upper limit.

6  
7 Expressing his opinion that a specified upper limit is important, Mr. Bunnell  
8 advised Chairman Voytilla that staff would be inform an applicant of the  
9 necessity to provide proof that it is not necessary to address the highest level  
10 within the upper limit, emphasizing that the burden of proof is on the applicant.

11  
12 Chairman Voytilla mentioned that prior to attempting to achieve consensus  
13 among the Planning Commissioners, staff should first address some of the issues  
14 that have been brought up.

15  
16 Mr. Bunnell referred to Commissioner Bliss' concerns with grading.

17  
18 Commissioner Barnard mentioned that while he understands Commissioner Bliss'  
19 concerns, in his opinion, the development on Murray Boulevard and Beard Road  
20 has been graded to death, and questioned what actually constitutes a minimum  
21 amount of grading.

22  
23 Commissioner Bliss emphasized that what actually constitutes a minimum  
24 amount of grading is actually his point.

25  
26 Commissioner Barnard questioned whether Commissioner Bliss feels that the  
27 guidelines are too restrictive and is suggesting that applicants could not provide  
28 necessary grading.

29  
30 Commissioner Bliss expressed his opinion that the grading at Murray Boulevard  
31 and Beard Road would not even meet the test, emphasizing that this site has  
32 involved mass grading from one end to the other. He pointed out that this area is  
33 zoned for a purpose, adding that it is necessary to do a great deal of grading in  
34 order to meet all applicable criteria and address density requirements.

35  
36 Observing that this involves the existing Development Code, Commissioner  
37 Barnard commented that this project has been accomplished with this restriction,  
38 adding that in theory, the developer is indicating that they had graded the property  
39 to the minimum possible. He expressed his opinion that this developer had  
40 accomplished a great deal under this restriction.

41  
42 Commissioner Bliss agreed that a great deal had been accomplished through the  
43 cooperative efforts of the developer and staff, expressing his opinion that although  
44 it did work, the younger people have a tendency to be very restrictive and focus  
45 inward.

46

1 Commissioner Barnard questioned whether this restriction would serve to prevent  
2 a developer from clear-cutting and leveling a site.

3  
4 Commissioner Maks requested clarification of whether applications that are  
5 driven by this language are being submitted and pointed out that the majority of  
6 this massive grading is being done to accommodate a very unusual water quality.  
7 He expressed concern with the potential to prevent applicants from creating a  
8 unique project simply to avoid addressing unusual issues.

9  
10 Commissioner Bliss referred to page AP-38, Item No. 10, observing that although  
11 this addresses the same issue, it is worded in different language, specifically  
12 “adverse effect of grading and contouring on a natural vegetation and appearance  
13 on the site”. He pointed out that he prefers to look to the future, rather than what  
14 has occurred in the past.

15  
16 9:22 p.m. to 9:30 p.m. – break.

17  
18 Chairman Voytilla observed that he would like to receive comments from staff at  
19 this time.

20  
21 Observing that staff would attempt to create more appropriate language regarding  
22 grading, Mr. Bunnell stated that both the Facilities Review and Design Review  
23 are basically verbatim existing language within the Development. He pointed out  
24 that staff had purposely not addressed these issues because they had determined  
25 that this would involve an entire text amendment in and of itself.

26  
27 Chairman Voytilla observed that while a developer attempts to address every  
28 possible issue within a site, including grading, drainage and natural  
29 characteristics, he believes that when manufacturing a site that looks artificial, a  
30 better project is created by compensating with additional landscaping or other  
31 features. He mentioned the terraced hillsides that have been manufactured in  
32 southern California, emphasizing that he would not like to see this occur here.

33  
34 Mr. Bunnell mentioned that Commissioner Johansen had provided a very helpful  
35 matrix, observing that staff had intentionally deleted the word “appropriate”. He  
36 explained that appropriate includes all uses that are permitted within a zone as  
37 well as all conditional uses that are permitted within a zone that are deemed up  
38 front to be appropriate.

39  
40 Commissioner Johansen agreed, pointing out that within the Comprehensive Plan  
41 with a previous application there had also been the language that addressed  
42 conditional uses being supportive, adding that this would affect the appropriate  
43 development of a zone.

44  
45 Mr. Bunnell observed that he is not certain how to address the word appropriate,  
46 noting that these appropriate uses are listed.

1  
2 Commissioner Maks disagreed with Mr. Bunnell, pointing out that according to  
3 the Comprehensive Plan, the conditioned uses within a Conditional Use Permit  
4 are there for a reason, emphasizing that outright use is also a permitted use. He  
5 mentioned that allowing so many fast-food restaurants eliminates the potential for  
6 Office Commercial, emphasizing that conditional uses are intended to be  
7 supportive of a zone and would not function alone.

8  
9 Mr. Bunnell responded to Commissioner Johnson's concern with specifically  
10 designating the City Council as the decision-making authority, observing although  
11 the Development Code designates different bodies as the decision-making  
12 authority for different issues, sometimes this is left generic when a decision could  
13 involve more than one body. He expressed his concern with addressing  
14 Commissioner Maks' comments regarding modifications to conditional uses.

15  
16 Chairman Voytilla referred to the discussion during the work session regarding  
17 this specific issue, observing that this could potentially create a major delay with  
18 regard to the ongoing construction.

19  
20 Commissioner Maks emphasized that it is necessary to clarify certain issues for  
21 the benefit of the public, noting that the public is not receiving the benefit of due  
22 process when revisions are made without their input.

23  
24 Mr. Bunnell pointed out that several design review thresholds specifically address  
25 that sort of situation.

26  
27 Chairman Voytilla expressed his opinion that there are situations in which a staff  
28 interpretation could create unnecessary issues.

29  
30 Commissioner Maks stated that this involves raw building product and structure  
31 and an expansion of a use that has been approved, emphasizing that he does not  
32 agree.

33  
34 Mr. Bunnell questioned whether Commissioner Maks is indicating that there  
35 should not be a process for this action.

36  
37 Chairman Voytilla suggested that this might involve a minor modification that  
38 could be processed over the counter, adding that this action is not changing the  
39 character, use, size, parking or vehicular trips, which are normally involved in a  
40 land use issue.

41  
42 Commissioner Maks emphasized that his concern is with impacting infrastructure.

43  
44 Mr. Bunnell pointed out that the threshold that had been mentioned does not  
45 affect character, use, size, parking or vehicular trips.

46

1 Chairman Voytilla requested that staff address the issues within this section and  
2 provide revisions to be reviewed.

3  
4 Mr. Bunnell stated that staff has received adequate direction to proceed with  
5 potential revisions to prepare for the next Public Hearing.

6  
7 Commissioner Johansen questioned whether Mr. Bunnell had addressed his  
8 concern with the quasi-judicial zone change.

9  
10 Observing that he had not addressed this issue, Mr. Bunnell stated that he believes  
11 that this language had been omitted because it addresses zone changes within a  
12 Comprehensive Plan designation with facilities that could be made adequate.

13  
14 Commissioner Johansen commented that he believes that at some point, this  
15 language had been included to the Development Code in response to very specific  
16 developments, expressing his opinion that this provides very important language  
17 in some cases.

18  
19 Commissioner Maks expressed his agreement with Commissioner Johansen's  
20 comments.

21  
22 Mr. Bunnell stated that he is not certain why this particular language was  
23 removed, adding that he will review the issue and report back to the Planning  
24 Commission.

25  
26 Chairman Voytilla reiterated that he is attempting to get consensus regarding the  
27 issues, noting that he would now like to address Chapter 50.

28  
29 Observing that he had not noticed this during Code Review, Commissioner Maks  
30 referred to page PR-10 and pointed out that regulations regarding Neighborhood  
31 Meetings had been revised and expressed his opinion that the intent of the original  
32 language is not reflected within the proposed amendments. He emphasized that  
33 the applicant is responsible for coordinating with the appropriate NAC to  
34 schedule a Neighborhood Meeting.

35  
36 Commissioner Bliss expressed his agreement with Commissioner Maks'  
37 comments, pointing out that sometimes these Neighborhood Meetings are not  
38 scheduled appropriately for the NAC to provide notification to the neighborhood.

39  
40 Referring to page PR-24, Commissioner Maks pointed out that the Development  
41 Code does not provide that an application can be approved or denied while  
42 holding the record open.

43  
44 Mr. Bunnell referred to a Memorandum dated November 9, 2001 from Mr. Sparks  
45 addressing this specific issue.

46

1 Commissioner Maks referred to page PR-32, and questioned whether it is  
2 appropriate for the Chairman to simply state that the applicable approval criteria  
3 is addressed within the Staff Report.

4

5 Mr. Naemura informed Commissioner Maks that he does not necessarily share  
6 that view.

7

8 Mr. Bunnell pointed out that he has attended meetings of the City Council during  
9 which all applicable criteria had been read verbatim for the benefit of those in  
10 attendance.

11

12 Mr. Naemura mentioned that there is different language addressing this issue  
13 within the ordinance and the text, adding that staff would make certain that this  
14 particular text addresses the applicable ordinance requirements.

15

16 Commissioner Maks referred to page PR-33, No. 7, regarding the procedure, and  
17 questioned the appropriateness of allowing an individual to present additional  
18 evidence, argument or testimony following the applicant's rebuttal and prior to  
19 the end of the Public Hearing. Observing that any individual has the right to  
20 request that the record be left open, he requested clarification of whether the  
21 intent is to provide for an additional rebuttal session.

22

23 Mr. Naemura advised Commissioner Maks that this is provided for within the  
24 statutes.

25

26 Mr. Bunnell suggested that the intent might be to state that prior to the conclusion  
27 of the hearing, any participant may request to hold the record open for the purpose  
28 of presenting additional evidence, argument or testimony.

29

30 Mr. Naemura emphasized that the Development Code should make an attempt to  
31 identify obscure statutory requirements at the level of an 8<sup>th</sup> grader, observing that  
32 this would necessitate a recent application of the rules based upon what occurs at  
33 that Public Hearing.

34

35 Expressing his opinion that this could be opening up a can of worms,  
36 Commissioner Maks emphasized that this section still provides any individual the  
37 opportunity to provide additional argument, evidence or testimony following the  
38 conclusion of the Public Hearing and suggested that this be revised, if possible.

39

40 Commissioner Johansen agreed with Commissioner Maks and questioned whether  
41 the Planning Commission has the option of merely holding the record open.

42

43 Commissioner Maks reiterated that following the conclusion of the hearing, an  
44 individual still has the opportunity to provide additional evidence, argument or  
45 testimony, adding that he has no recollection of this within the State statute.

46

1 Mr. Naemura noted that this sentence contains own action clause, which describes  
2 responses or choices that are available to the decision-making body.

3  
4 Mr. Bunnell commented that it is his understanding that the hearing can be  
5 continued or held open for a specific purpose.

6  
7 Commissioner Maks emphasized that this is not what that particular section states,  
8 pointing out that it provides that an individual can provide oral testimony  
9 following the applicant's rebuttal.

10  
11 Mr. Naemura commented that this section does not actually state this.

12  
13 Commissioner Maks emphasized that although this section does not actually state  
14 that an individual is able to provide oral testimony following the applicant's  
15 rebuttal, he believes that any 8<sup>th</sup> grader reading it would make this interpretation.

16  
17 Observing that he had discussed this issue with Mr. Sparks, Mr. Naemura stated  
18 that it might be appropriate to reopen that conversation.

19  
20 Noting that the public is entitled by law to request either a continuance or that the  
21 record be left open for a certain period of time, Commissioner Maks emphasized  
22 that it should be clear that no testimony would be accepted following the  
23 applicant's rebuttal. Referring to page PR-66, he requested an expansion on the  
24 term "modification of decision", observing the Planning Director would  
25 determine whether this decision for a modification involves a Type 2 or Type 3  
26 process.

27  
28 Mr. Bunnell stated that every application listed in Chapter 40 provides for a  
29 procedure for modification of decision.

30  
31 Commissioner Maks pointed out that No. 4 states that only a decision that  
32 approves or conditionally approves an application can be modified, noting that if  
33 a Type 3 application is approved and conditioned at a Public Hearing, a future  
34 revision could involve a Type 1 or a Type 2.

35  
36 Mr. Bunnell referred to No. 6 on page PR-66, which provides that a change in a  
37 Condition of Approval must be approved by the same decision-making body. He  
38 pointed out that Chapter 40 addresses thresholds and the modification of a  
39 previous decision.

40  
41 Commissioner Johansen referred to Item No. 4 on page PR-46, which addresses  
42 who is able to submit evidence to the City Council regarding the appeal of a Type  
43 3 decision and questioned whether the Planning Commissioners should have the  
44 ability to provide testimony on such an issue. He expressed his opinion that while  
45 there may be, in some cases, a reason for such testimony, to his knowledge, this  
46 has not yet occurred.



1  
2 Mr. Bunnell advised Commissioner Johansen that he would attempt to find out  
3 the answer to this question.  
4

5 Commissioner Barnard stated that he concurs with Commissioner Maks' first two  
6 statements, and mentioned that Section 50.95.6 is pretty well quantified on a, b, c  
7 or d, adding that it provides only four reasons allowing such a modification.  
8

9 On question, Commissioner Lynott indicated that he had no comments or  
10 questions at this time.  
11

12 On question, Commissioner Bliss referred to the first paragraph of page PR-19,  
13 observing that the term should be non-discretionary.  
14

15 Chairman Voytilla requested that staff provide a new date on any revisions that  
16 are submitted for clarification purposes and that the revisions clearly indicate  
17 what has been deleted and added.  
18

19 Commissioner Bliss referred to the second paragraph of page PR-35, Section  
20 50.58.2, requesting that it be amended, as follows: "...no fewer than 10..."  
21

22 Referring to page PR-13, Commissioner Maks requested clarification of the  
23 notification on a Type 1 application.  
24

25 Mr. Bunnell advised Commissioner Maks that the notification on a Type 1  
26 application is provided following the decision.  
27

28 Chairman Voytilla reiterated that he is attempting to get consensus regarding the  
29 issues, noting that he would now like to address Chapter 10.  
30

31 There was no response regarding Chapter 10 at this time.  
32

33 Chairman Voytilla mentioned that he would now like to address Chapter 60 for  
34 consensus purposes.  
35

36 Commissioners Bliss and Maks both indicated that they had issues to discuss  
37 regarding Chapter 60.  
38

39 Chairman Voytilla suggested that the Public Hearing be continued for further  
40 discussion at a later date.  
41

42 Mr. Bunnell stated that Mr. Sparks had suggested that this Public Hearing be  
43 continued until November 28, 2001, adding that CUP 2001-0017 – Prince of  
44 Peace Lutheran Church Conditional Use Permit is also scheduled for this date.  
45

Commissioner Maks **MOVED** and Commissioner Barnard **SECONDED** a motion to continue 1) TA 2001-0001 – Chapter 40 Update Text Amendment; 2) TA 2001-0002 – Chapter 50 Update Text Amendment; 3) TA 2001-0003 – Chapter 10 Update Text Amendment; 4) TA 2001-0004 – Chapter 60 Update Text Amendment; 5) TA 2001-0005 – Chapter 90 Update Text Amendment; 6) TA 2001-0007 – Beaverton Municipal Code Text Amendment; and 7) TA 2001-0008 – Chapter 20 Update Text Amendment to a date certain of December 19, 2001.

Motion **CARRIED**, unanimously.

Chairman Voytilla expressed his appreciation of the efforts of staff and others involved in this update to the Development Code.

#### **APPROVAL OF MINUTES:**

Minutes of the meeting of October 3, 2001 (continued from November 7, 2001), submitted. Commissioner Maks referred to line 16 of page 14, requesting that the Recording Secretary review the tape and make certain that this is what he said. Commissioner Johansen **MOVED** and Commissioner Maks **SECONDED** a motion that the minutes be approved as written.

Motion **CARRIED**, unanimously, with the exception of Commissioners Barnard and Lynott, who abstained from voting on this issue.

Minutes of the meeting of October 17, 2001 (continued from November 7, 2001), submitted. Commissioner Johansen **MOVED** and Commissioner Bliss **SECONDED** a motion that the minutes be approved as written.

Motion **CARRIED**, unanimously.

#### **MISCELLANEOUS BUSINESS:**

The meeting adjourned at 10:22 p.m.